

ORIGINAL

FILED
DISTRICT COURT OF GUAM

NOV 13 2007

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17 UNITED STATES DISTRICT COURT
18 TERRITORY OF GUAM

20 U.S. EQUAL EMPLOYMENT
21 OPPORTUNITY COMMISSION

21 Plaintiff,

22 vs.

23 LEO PALACE RESORT,
24

25 Defendant.
26

CIVIL CASE NO. 06-00028

NOTICE OF LODGING OF
ORIGINAL SIGNATURE OF EEOC
COUNSEL ANGELA MORRISON

27 COMES NOW the United States and lodges with the Court, the original signature, of the
28 government's Declaration of Angela Morrison in Support of Plaintiff EEOC's Opposition to

1 Defendant's Motion to Dismiss Emotional Distress claims of Plaintiff-Intervenor Holbrook the
2 above entitled matter, a facsimile copy of which was previously filed on November 7, 2007.

3 DATED: November 13, 2007.

4
5 LEONARD M. RAPADAS
6 United States Attorney
7 Districts of Guam and NMI

8 BY: _____

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10 Assistant U.S. Attorney
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20 **UNITED STATES DISTRICT COURT**

21 **DISTRICT OF GUAM**

22 U.S. EQUAL EMPLOYMENT
23 OPPORTUNITY COMMISSION,

24 Plaintiff,

25 v.

26 LEO PALACE RESORT,

27 Defendant.

28 JENNIFER HOLBROOK; VIVIENE
29 VILLANUEVA; and ROSEMARIE
30 TAIMANGLO,

31 Plaintiff-Intervenors,

32 v.

33 MDI GUAM CORPORATION d/b/a LEO
34 PALACE RESORT MANENGGON
35 HILLS and DOES 1 through 10,

36 Defendants.

Case No.: 2:06-CV-00028

DECLARATION OF ANGELA
MORRISON IN SUPPORT OF
PLAINTIFF EEOC'S OPPOSITION
TO DEFENDANT'S MOTION TO
DISMISS EMOTIONAL DISTRESS
CLAIMS OF PLAINTIFF-
INTERVENOR HOLBROOK

1 I, Angela D. Morrison, declare and state:

2 1. I am a Trial Attorney employed at the Las Vegas Local Office, Los Angeles
3 District Office of the United States Equal Employment Opportunity Commission. I have
4 personal knowledge of the facts stated herein, and if called as a witness to testify as to the
5 matters stated herein, I could and would competently do so.

6 2. On October 22, 2007, I telephonically attended the reconvened deposition
7 of Tom Babauta, MSW.

8 3. One of the first questions counsel for LeoPalace asked Mr. Babauta was
9 whether Mr. Babauta's handwritten notes were included in his office's production of
10 Plaintiff-Intervenor's records dated September 20, 2007.

11 4. Counsel for LeoPalace did not ask Mr. Babauta any substantive questions
12 about his treatment of Jennifer Holbrook. Counsel for LeoPalace did not ask Mr.
13 Babauta to verify whether he had included his notes concerning his treatment of Vivienne
14 Villanueva. Counsel for LeoPalace only questioned Mr. Babauta whether the Holbrook
15 notes were included and why they were not included, and how many times he had treated
16 Jennifer Holbrook. After approximately ten minutes of such questions, counsel for
17 LeoPalace sought to terminate the deposition. However, Plaintiff-Intervenor's counsel
18 asserted his right to cross-examine the witness.

19 5. At the October 22, 2007 deposition, Mr. Babauta testified he did not begin
20 treating Jennifer Holbrook until April 2006.

21 6. During the October 22, 2007 deposition, Mr. Babauta testified that he was
22 not working with Jennifer Holbrook regarding this case and only talked about LeoPalace
23 in one session.

24 7. During the October 22, 2007 deposition, Mr. Babauta testified that nobody
25 contacted him regarding his missing handwritten notes about Jennifer Holbrook.

26 8. During the October 22, 2007 deposition, Mr. Babauta testified he gave all
27 his handwritten notes to his office's secretary, Sabrina LNU, to copy for production to
28 Defendant. Mr. Babauta testified that he believed that there was a mix-up because, at one

1 point, the office thought that they were to produce only those records relevant to the
2 instant case. Because Mr. Babauta did not treat Jennifer Holbrook regarding this case, he
3 testified that his office may have believed those records were not covered by the Court
4 Order and so Dr. Lilli Perez-Iyechad, another therapist in his office, instructed the
5 secretary not to copy Mr. Babauta's handwritten notes regarding Jennifer Holbrook.

6 9. During the October 22, 2007 deposition, Mr. Babauta offered to have his
7 office produce the missing notes and said that he could call his office's secretary to have
8 her bring the notes to LeoPalace's counsel's office where the deposition was taking place.

9 10. EEOC was not informed that Defendant LeoPalace believed Ms.
10 Holbrook's records were missing prior to the deposition.

11 11. Counsel for Defendant LeoPalace did not inform EEOC about the Motion
12 to Dismiss prior to filing the motion on October 22, 2007.

13 12. Attached as Exhibit 1 is a true and correct copy of the Declaration of Phil
14 Torres in Support of EEOC's Opposition to Defendant's Motion to Dismiss Emotional
15 Distress Claims of Plaintiff-Intervenor Holbrook, previously filed in this case as Court
16 Docket #95.

17 13. Attached as Exhibit 2 is a true and correct copy of the Court's Order dated
18 September 14, 2007 (Court Doc. # 66).

19 14. Attached as Exhibit 3 is a true and correct copy of excerpts from the
20 deposition transcript of Tom Babauta, MSW, dated July 30, 2007.

21 15. Attached as Exhibit 4 is a true and correct copy of excerpts from the
22 deposition transcript of Jennifer Holbrook.

23 16. Attached as Exhibit 5 is a true and correct copy of Dr. Lilli Perez-Iyechad's
24 treatment summary of Jennifer Holbrook.

25 17. Attached as Exhibit 6 is a true and correct copy of the cover letter to the
26 records produced by Dr. Perez-Iyechad and Mr. Babauta to Defendant Leo Palace.

27 18. Attached as Exhibit 7 are true and correct copies of subpoenas served on
28 Tom Babauta, MSW and Dr. Lilli Perez-Iyechad, dated July 17, 2007.

19. Attached as Exhibit 8 is a true and correct copy of the Court's Order Modifying Scheduling Order, dated September 27, 2007 (Court Doc. #73).

20. On October 22, 2007, I telephonically attended the deposition of Dr. Lilli Perez-Iyechad. The deposition was continued and I attended telephonically the continued deposition of Dr. Lilli Perez-Iyechad on November 3, 2007.

21. During Dr. Perez-Iyechad's continued deposition on November 3, 2007, she testified that she did not instruct her office's secretary to not copy Mr. Babauta's therapy records concerning Ms. Holbrook. Dr. Perez-Iyechad testified that prior to receiving the Court's September 14, 2007 Order, she and Mr. Babauta had a conversation in which they discussed whether Mr. Babauta would be required to produce his therapy records concerning Ms. Holbrook because they were not relevant to this case.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of November, 2007, at Las Vegas, Nevada.

Angela D. Morrison
Angela D. Morrison